

## DEBTS AND DISPUTES

If you've ever been owed money, you know it's a frustrating situation to be in. Even when it's a small sum, debts not only leave a bad taste, but they can really affect your financial situation, or the financial situation of your business. Even though the movies prescribe baseball bats and hard handed tactics, we're here to explain in this brief guide that the law does offer you some solutions to the problem of being owed money.

### Understanding Debt

In simple terms, a debt refers to something (usually money) that is owed or due to another person or organisation. You may have noticed that debt is everywhere. You probably have debt, whether it's a student loan, a credit card balance or a mortgage. Your friends have debt. Our government is in debt and the banks are in debt. We could go on and on - debt is everywhere.

Perhaps you've also been owed a debt too. You lent a friend \$100 and they never paid it back to you. Or you did some work for a client, sent them an invoice and they never paid it. Maybe you run a business and you sent an order of goods to a customer and they refused to pay you for them.

Sometimes debts are very clear. For example, where I issued you an invoice for work I did and you won't pay me because you don't want to. However, sometimes debts are incredibly unclear. For example, I believe that you owe me money because you misled me about a product I bought from you. You say that there was nothing misleading at all, so you don't owe me money.

If there's one thing we've noticed from years of helping people recover their debts is that every debt is slightly different - each has its own unique circumstances and background.

### What to do?

If you're owed money by someone or some entity (we'll call them the **debtor** going forward), we suggest that your first response is to give your lawyer a call to get their advice. No guide can be comprehensive or individualised enough to tell you what you should do in your exact circumstances. In the world of debts and disputes, many of your options *require* specialised legal advice and expertise.

Depending on your circumstances, your lawyer will explain to you that there are a range of options available to you if you are owed money. Here's a brief guide to some of the most common options and responses:

**Step 1**  
**Get your ducks in a row**

It's always a good idea to get things organised when you're owed money. Make sure your records are accurate and clear, then send the debtor a clear statement showing the money that they owe you, the date it was due and state clearly that payment is now overdue.

It's also a good idea to gather any documents that establish the debt (like loan agreements, contracts, invoices, statements, or a written confirmation of the amount outstanding), provide copies to the debtor and make sure that they have all the details that would allow them to make payment to you.

**Step 2**  
**Consider your options**

<b>Negotiate</b>	<p>Either by yourself, or with the help of your lawyer, you may like to start communicating with the debtor and give them the opportunity to explain why they can't or won't pay. Through these communications or meetings, you may consider coming to some arrangement that will allow you to recover your money, or at least an appropriate portion of your money. Sometimes simply getting your lawyer involved at this stage shows that you're serious, which can help motivate the debtor to pay you.</p> <p>Coming to an agreement early on can be wise for a number of reasons, the biggest of which is that you'll likely save yourself time, effort and money by avoiding taking further steps to try and recover the debt.</p>
<b>Write it off</b>	<p>Writing off a debt is never enjoyable and always frustrating. However, as the old saying goes: "You win some, you lose some". Sometimes it may be a better use of your time and resources to simply let it go, rather than fight it out.</p>
<b>Hire a debt collection company</b>	<p>You could enlist the help of a reputable debt collection company to take the debt off your hands and try and get the money back from the debtor. You may either "sell" the debt to an agency, or simply hire an agency to help you recover the money.</p>
<b>Report the debt with a credit reporting agency</b>	<p>There are at least three companies in New Zealand that are in the business of collecting credit information about individuals and companies and maintaining a database of information. If you aren't being paid, you have the option of reporting the debt with a credit reporting agency, who will put the information on the file of the debtor (but only if certain conditions are met, like the debt has been outstanding for more than 30 days, for example).</p>

From the debtor's perspective, this is a pretty bad thing. Landlords, banks, employers, insurers and other lenders may request this credit report in the future and having a bad record will put the debtor at a disadvantage for future opportunities. For this reason, threatening to report the debt with a credit reporting agency may help you recover money from the debtor, who likely wants to avoid the consequences of a bad credit rating.

### Step 3 Did you take security?

Wait, what? Security? What does that even mean?

If you give a person a loan, or provide them with certain goods and, as part of that transaction, you take the option of legally holding a right to an asset of theirs, this means you have *security* and that the transaction is *secured*. Security doesn't just come about, however, it must be specifically included in a formal agreement, agreed to by both parties and, in some cases, formally registered, in order to be effective.

If the debtor doesn't give you what you are owed, and you have valid security in relation to that debt, you can *enforce* it. That means that you take legal ownership of the asset in question by going through a series of steps.

For example, let's say Steve buys a car with a loan from a finance company. The finance company lists the car as security for that loan in the loan agreements, which Steve signs. If Steve can't make his repayments on the loan, the finance company has the opportunity to take possession of the car (provided that all the right legal conditions are satisfied and the security is valid).

Security takes different forms in different circumstances. For example, in the case of a home loan, the bank will loan money to a debtor and in exchange, will take security over the house that's being purchased. To take security over a house, the bank must register a mortgage against the house.

You may know that you don't have security that is relevant to the outstanding debt. If that's the case, we'll look at some of your options below. If you think you do have security, we recommend talking to your lawyer about how best to enforce this so you can recover assets or money from the debtor. There are many legal requirements that must be satisfied before you can rely on your security and it's a complicated area of the law.

Talk to your lawyer!

**Step 4**  
**Going to Court**  
**Disputes Tribunal / District Court / High Court**

**When your debtor owes you a certain type of debt that is under \$15,000:**

**Make an  
application:  
Disputes Tribunal**

In certain circumstances you can make a claim in the Disputes Tribunal against the debtor. The Tribunal offers a relatively quick and inexpensive process for settling many disputes, but not all. Note that there are strict rules about when you can and cannot file a claim. For example, the Tribunal:

- Is only for claims up to \$15,000 (or, if both parties agree, \$20,000).
- Is only for *disputes*. If your debtor agrees that they owe you money but just won't pay, the Tribunal will not hear the matter. The function of the Tribunal is to resolve disputes, rather than turning into a debt collection agency, which is an important limitation, practically.
- Will not hear disputes about rates, taxes, social welfare payments, ACC payments, intellectual property, wills, land, family law issues or the following areas with their own dispute resolution regime:
  - renting disputes (see: [www.tenancy.govt.nz/disputes](http://www.tenancy.govt.nz/disputes))
  - leaky home issues (see: [www.justice.govt.nz/tribunals/weathertight-homes](http://www.justice.govt.nz/tribunals/weathertight-homes))
  - employment disputes (see: [www.era.govt.nz](http://www.era.govt.nz))
- Will hear disputes about a range of different things including, for example, disputes that arise in business dealings, between neighbours and in relation to goods and services.

Fortunately, there is no restriction on who you can file a claim against, meaning that you can file a claim against an individual, a company or any other organisation.

You can't have your lawyer represent you at the Disputes Tribunal and there are no judges. Each hearing is run by a referee who will encourage you to come to an agreement about the dispute. For more information on whether the Disputes Tribunal is an appropriate option for you, you can talk to your lawyer for some initial advice, or, alternatively, find more information, as well as an application form, on the Tribunal's website: [www.disputestribunal.govt.nz](http://www.disputestribunal.govt.nz).

<b>When your debtor is an individual:</b>	
<p><b>File a claim: District Court / High Court</b></p>	<p>If the Disputes Tribunal doesn't work for your circumstances, or you choose to avoid the Tribunal, you may initiate legal action against the debtor by making an application to the District Court or High Court. If the debt is less than \$200,000, you can apply to the District Court. You can make an application to the High Court for a debt of any value, but due to the higher costs of a claim in the High Court, it's normal to only bring a claim in the High Court unless it's for a significant amount of money (i.e., over \$200,000) or based on very complicated facts.</p> <p>In making a claim, you're hoping that a Judge will eventually make a judgment confirming that you are owed a debt by the debtor. To get here is a long road of hearings, evidence and court dates. This is the civil litigation process and it requires the help of a qualified and experienced lawyer to navigate the (always) complicated court system.</p> <p>If you get a judgment in your favour, you can then enforce it in various ways to get payment. Some of those ways include applying for an attachment order, a warrant to seize property, a charging order on property, community work, or bankruptcy (as we'll discuss below). Your lawyer will explain how each of those work in practice and which is best for you if you find yourself in the position of enforcing a judgment.</p> <p>We should point out that an application to the Court in this circumstance is a pretty serious decision and shouldn't be taken lightly due to the significant time and cost involved.</p>
<p><b>Bankruptcy</b></p>	<p>If you get a judgment against the debtor, you can apply to the Court to bankrupt them which is a significant burden for any debtor and has long lasting consequences in personal and business realms.</p> <p>In bankruptcy, the debtor's assets will all be seized and sold to pay off that person's debts. However, there is an order of priority that debts must be paid off in, and depending on where your debt falls on that scale of priority, there's a risk you still won't be paid after all this hard work (and expense) Further, bankruptcy doesn't usually yield a lot of money. However, sometimes the threat of bankruptcy will be a powerful way to compel the debtor to pay you and settle the debt.</p>

**When your debtor is a company:**

**Statutory Demand**

**Liquidation**

If the debtor is a company, the debt is undisputed, and the debt is for more than \$1,000, a common option available to you is to issue the company a statutory demand - a legal document demanding payment for the outstanding debt. A statutory demand must be carefully considered and crafted in order to comply with the relevant law, so having a lawyer is essential for this process. The most important factor is that a statutory demand shouldn't be issued where there is a dispute over the debt.

Once a statutory demand is received by the debtor company, it has two main options in terms of responding. It must either:

- Make an application to the court to "set aside" the statutory demand within *ten working days*. The Court can make this order if there is an arguable dispute over the debt; or
- Pay the debt or enter into some arrangement or compromise that will result in payment, or secure payment in the future within *fifteen working days*.

If the debtor doesn't pay or doesn't dispute the demand in the specified timeframes, it is presumed that it can't to pay its debts and therefore, you may apply to the Court to have the company liquidated. Again, this is a process that you'll need your lawyer's help on as it's a technical and complicated area of the law.

It's also important to weigh up whether liquidation will actually help you get your money back. When a company is liquidated, its assets will be collected and sold to pay outstanding debts. However, there will likely be a number of people needing to get paid and the law prioritises certain debts above others. If your debt is classified as a debt that falls to the bottom of the pile, there may not be enough money from the liquidation process to cover it. Your lawyer can help you understand this process and work through the big decisions involved.

<b>File a claim: District Court / High Court</b>	<p>If the debt is disputed, a statutory demand is not the way to go. Where it's obvious that the debtor company disputes the debt, and you're looking to take legal action, the usual course of action is to make a claim in the District Court or High Court.</p> <p>As we discussed above, the nature of the claim determines which Court you will apply to, and, on application, the civil litigation process will begin. In this case, like with a claim against an individual, the end goal is to obtain a judgment from the Court in your favour so you can require the debtor to pay up. We'll repeat our advice from above: Make sure you talk to your lawyer before you commit to the lengthy and costly process of civil litigation!</p>
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**Have a question about a debt or dispute? Or perhaps you just fancy a chat about how this information applies to your situation? If so, we would love to help. You can give us a call or send us an email for more information.**

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